

D37VFERT

Verdict

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

10 Cr. 863 (AKH)

6 JOE FERNANDEZ,

7 Defendant.

JURY TRIAL

8 New York, N.Y.
9 March 7, 2013
10 11:36 a.m.

11 Before:

12 HON. ALVIN K. HELLERSTEIN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

18 TODD BLANCHE

19 RUSSELL CAPONE

20 JOHN P. CRONAN

21 Assistant United States Attorneys

22 MURRAY RICHMAN

23 BRIAN PAKETT

24 Attorneys for Defendant

25 ALSO PRESENT: SHAWN MacDONALD, DEA
26 VANESSA QUINONES, Paralegal
27 DON TAYLOR, Paralegal

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1 (Trial resumed)

2 (In open court; jury not present)

3 (At 11:20 a.m., a note was received from the jury)

4 THE COURT: The note, Exhibit 13, that I received this
5 morning at 11:20 a.m. is that the jury has reached a verdict.

6 So we'll bring in the jury.

7 Brigitte, I should read to the jury the notes that we
8 sent in that came to us. So let me have those also.

9 (Jury present)

10 THE COURT: I have your note, which we marked as
11 Exhibit 13, that the jury has reached a verdict dated today,
12 March 7, 11:20 a.m., signed Loreinnie Corchado, foreman.

13 I have to go over the last two notes which I have not
14 read into the record in your presence, so I'm going to do that
15 now.

16 First, Court Exhibit 11: "We would like copies of
17 full testimony from one Alberto Reyes, also known as Zac.
18 Second, Yubel Mendez-Mendez. Thanks so much. Loreinnie
19 Corchado, 3/6/13, 2:10 p.m."

20 And we have sent in those transcripts; correct,
21 Ms. Corchado?

22 FOREPERSON: Yes.

23 THE COURT: And the next note: "Would we be able to
24 get a copy of the photo with the two victims laying on the
25 ground. This photo has view of the elevator and the staircase.

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1 Also, we'll be able to stay today until 4:30 p.m. Thanks so
2 much. Loreinnie Corchado, March 6, 2013, 3:15 p.m."

3 What was the exhibit number, Mr. Blanche, that was
4 sent in?

5 MR. BLANCHE: 25, your Honor.

6 THE COURT: Exhibit 25.

7 And you received that, Ms. Corchado?

8 FOREPERSON: Yes.

9 THE COURT: And you did stay and deliberate till 4:30
10 p.m., which brings us to the note itself. And if you would be
11 so kind as to deliver the verdict to Ms. Jones.

12 Before I open it, would you poll the jury to see if
13 everyone is here.

14 THE DEPUTY CLERK: Okay.

15 (Jury roll called; all present)

16 THE COURT: Jury is all here.

17 I'll put it back into the envelope and give it to
18 Ms. Jones, to return to Ms. Corchado.

19 THE DEPUTY CLERK: Will the foreperson please rise.

20 How do you find Joe Fernandez with respect to Count
21 One, conspiracy to commit murder-for-hire?

22 FOREPERSON: Guilty.

23 THE DEPUTY CLERK: Did the conspiracy to commit murder
24 for hire result in the death of either or both Ildefonso
25 Vivero-Flores or Arturo Cuellar?

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1 FOREPERSON: Yes.

2 THE DEPUTY CLERK: How do you find Joe Fernandez with
3 respect to Count Two, murder through use of a firearm?

4 FOREPERSON: Guilty.

5 THE COURT: Ms. Jones will show the verdict to counsel
6 please.

7 Members of the jury, you've done a job that, as I said
8 earlier, is required of citizens of the United States who are
9 not lawyers, who are not members of this Court, although can
10 be, who are not judges, who participate as much as they do in
11 the administration of justice.

12 You deliberated; you've gone over the evidence very
13 carefully after first paying attention to all the evidence;
14 you've reached a unanimous verdict. And for this, the system
15 is better, the entire administration of justice is better, and
16 I hope you feel better in having done your job. It's not what
17 you decide that is important in this context, it's that you do
18 decide it, that you make the decision after very careful review
19 of the evidence, after listening to the witnesses, and
20 reviewing the evidence, and listening to the lawyers and the
21 arguments, and the instructions, and deliberating.

22 And it's evident from the way you asked for
23 instructions to be given to you again, and from your careful
24 review of the evidence that you found most relevant and most
25 touching to the case, that you did your job very carefully.

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1 I thank you.

2 I hope you have received as much of a fulfillment of
3 the job as a citizen as I feel in your presence.

4 Thank you very much.

5 You're discharged.

6 Yes, Mr. Richman.

7 MR. RICHMAN: Your Honor, may we poll the jury?

8 THE COURT: Yes, thank you. We'll do that.

9 Polling of the jury means -- let me tell you this.

10 The verdict, although unanimous, in addition to it being
11 unanimous, has to reflect the decision of each and every one of
12 you. Polling the jury tests that.

13 So Ms. Jones will call each of your names.

14 THE DEPUTY CLERK: How did you find Joe Fernandez with
15 respect to Count One, conspiracy to murder for hire?

16 (Jury polled; each juror answered in the affirmative)

17 THE DEPUTY CLERK: Did the conspiracy to commit murder
18 for hire result in the death of either or both Ildefonso
19 Vivero-Flores or Arturo Cuellar?

20 (Jury polled; each juror answered in the affirmative)

21 THE DEPUTY CLERK: How do you find Joe Fernandez with
22 respect to Count Two, murder through use of a firearm?

23 Guilty.

24 (Jury polled; each juror answered in the affirmative)

25 THE COURT: Jury has been polled.

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1 Is there anything else I need to do before I discharge
2 the jury?

3 MR. BLANCHE: Not from the government, your Honor.

4 MR. RICHMAN: Not from the defense, your Honor.

5 THE COURT: I now discharge you, with great thanks.

6 Miss Jones will take you into the back room, take your
7 books from each of you, and we will destroy the notes.

8 (Jury discharged)

9 THE COURT: Under Rules 29 and 33, the defendant has
10 14 days within which to make motions, renewing earlier motions,
11 asking for a new trial, and asking for a judgment
12 notwithstanding the verdict.

13 Mr. Richman, my suggestion is that you file, if you
14 wish to file, a mere motion paper without support on or before
15 the 14th day, and have until, say, 30 days or whatever time you
16 think is appropriate and is satisfactory to the government to
17 support the motion with whatever supporting papers you think
18 appropriate, and the government will have time to respond.

19 MR. RICHMAN: Thank you, your Honor. I will.

20 THE COURT: How much time should I give you?

21 MR. RICHMAN: In view of the fact that we have 14
22 days, plus theoretically the 30 days, I suggest about 43 days,
23 so we don't go come --

24 THE COURT: I'm going to give you a date certain.

25 MR. RICHMAN: 43 days.

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1 THE COURT: We'll expect a filing from you, just a
2 bare motion, on or before the 14th day from today. And today
3 is the 7th, so it should be filed on or before the 21st.
4 Maybe -- I can never get the count exactly -- it could be the
5 21st, it could be the 22nd. Get it the earlier date.

6 MR. RICHMAN: I will.

7 THE COURT: Well before that.

8 And then let me give you until -- you have Passover or
9 Easter.

10 MR. RICHMAN: I'm aware of that.

11 THE COURT: Why don't I give you till April 26th.

12 MR. RICHMAN: Yes.

13 THE COURT: Is that enough time, Mr. Richman?

14 MR. RICHMAN: It is.

15 THE COURT: All right.

16 So April 26. May 24 for the government to oppose.

17 MR. BLANCHE: Yes, your Honor.

18 THE COURT: June 7th for reply.

19 Is that good?

20 All right. Anything else before we close this part of
21 the case?

22 I have to give you a sentencing date.

23 Do you have one, Alex?

24 July 26, 11 o'clock.

25 Mr. Richman.

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1 MR. BLANCHE: That's fine with the government.

2 MR. RICHMAN: It's good with me, your Honor.

3 THE COURT: All right.

4 The probation officer should know that the
5 defendant -- well, let me withdraw that.

6 Mr. Richman should be given a notice of any interview
7 proposed of the defendant with an opportunity to be present.
8 And if the defendant decides to take the Fifth Amendment with
9 regard to that interview, Mr. Richman, you should advise the
10 probation officer.

11 MR. RICHMAN: I will be with him during the interview,
12 your Honor.

13 THE COURT: Sorry?

14 MR. RICHMAN: I will be with him during the interview.

15 THE COURT: All right. Fine. That takes care of it.

16 MR. RICHMAN: July 26 at 10 o'clock, your Honor?

17 THE COURT: Eleven o'clock.

18 Is there anything else, Mr. Blanche?

19 MR. BLANCHE: No, your Honor.

20 THE COURT: Mr. Richman?

21 MR. RICHMAN: No, your Honor.

22 THE COURT: The difficulty with trial is that it ends
23 with a decision. The benefit of a trial is that it ends with a
24 decision. So what is the benefit to the system, is a painful
25 experience to at least one of the litigants, in this case is

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1 the defendant.

2 I'm not going to say anything, Mr. Fernandez, to deal
3 with the situation, because I can't say at this time anything
4 that really would be commensurate with the experience. But in
5 the sense of being a participant in all that happened and
6 witnessing an extraordinarily capable performance by your
7 counsel, there has to be some measure of respect for what has
8 occurred. And I hope that is the case, and that it results for
9 the good of everyone.

10 We are recessed.

11 Thank you very much.

12 (Trial concluded)

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